

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DISCOVER BANK,

\*

Plaintiff,

\*

v.

No. 2:05-CV-0019-MEF-DRB

\*

SHIRLEY COOK, BETTIE RUDOLPH,  
and RUBEN RUDOLPH,

\*

Defendants.

\*

\*

**MOTION TO DISMISS**

Pursuant to Rule 12(b) *Fed.R.Civ.P.*, defendants Shirley Cook, Bettie Rudolph, and Ruben Rudolph respectfully move the Court to dismiss the Complaint filed in this action for lack of jurisdiction, and state as follows:

1. There is no subject matter or federal question jurisdiction in this case under 9 U.S.C. § 4 or any other applicable statute.
2. There is no diversity jurisdiction in this case under 28 U.S.C. § 1332.
3. The Complaint fails to state a claim upon which relief may be granted.

Defendants respectfully submit herewith a Memorandum in Support of Motion to Dismiss.

Respectfully submitted,

s/James N. Walter, Jr.  
James N. Walter, Jr. (WAL021)  
Christopher W. Weller (WEL030)  
Wyndall A. Ivey (IVE003)

OF COUNSEL:

CAPELL & HOWARD, P.C.  
150 South Perry Street (36104)  
P.O. Box 2069 (36102-2069)  
Montgomery, Alabama  
(334) 241-8000 / telephone  
(334) 323-8888 / fax

George C. Douglas, Jr. (DOU002)  
700 Century Park South, Suite 223  
Birmingham, Alabama 35226  
(205) 824-4620 phone  
(866) 715-5420 fax

Jerry L. Thornton (THO038)  
P.O. Box 759  
120 Lafayette Street  
Hayneville, Alabama 36040  
(334) 548-2514 / telephone  
(334) 548-2700 / fax

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 28<sup>th</sup> day of January, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:.

Wilson F. Green, Esq.  
Battle Fleenor Green Winn & Clemmer  
505 North Twentieth Street, Suite 1150  
Birmingham, Alabama 35203

s/James N. Walter, Jr.  
Of Counsel